

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE JULY 3, 2012

AMENDED IN ASSEMBLY MAY 3, 2012

AMENDED IN ASSEMBLY APRIL 25, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Gatto
(Coauthors: Assembly Members Fletcher, Huffman, Nestande,
V. Manuel Pérez, and Wieckowski)
(Coauthors: Senators Correa and DeSaulnier)

February 8, 2012

An act to *add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, and 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as amended, Gatto. Food safety: cottage food operations. Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food,

drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Small businesses have played an important role in helping
4 slow economies recover and prosper as an engine of job creation.
5 During the 1990s, small businesses created the majority of new
6 jobs and now account for 65 percent of United States employment.
7 (b) California, and the United States as a whole, are facing
8 growing obesity and obesity-related disease epidemics.
9 (1) Two-thirds of American adults and nearly one-third of
10 children and teens are obese or overweight, placing them at risk
11 for developing chronic diseases such as diabetes, heart disease,
12 and cancer.
13 (2) One in every nine California children, one in three teens,
14 and over half of adults are already overweight or obese. This
15 epidemic affects virtually all Californians.
16 (3) These health conditions are preventable and curable through
17 lifestyle choices that include consumption of healthy fresh foods.
18 (c) For decades, low-income and rural communities have faced
19 limited opportunities to purchase healthy foods. Often, without
20 cars or convenient public transportation options, low-income
21 residents in these areas must rely for much of their shopping on
22 expensive, fatty, processed foods sold at convenience and corner
23 stores.
24 (d) There is a growing movement in California to support
25 community-based food production, sometimes referred to as
26 “cottage food,” “artisanal food,” “slow food,” “locally based food,”
27 or “urban agriculture” movements. These movements seek to
28 connect food to local communities, small businesses, and
29 environmental sustainability.
30 (e) Increased opportunities for entrepreneur development
31 through microenterprises can help to supplement household

1 incomes, prevent poverty and hunger, and strengthen local
2 economies.

3 (f) At least 32 other states have passed laws that allow small
4 business entrepreneurs to use their home kitchens to prepare, for
5 sale, foods that are not potentially hazardous.

6 (g) Even some bake sales are currently illegal in California.

7 (h) It is the intent of the Legislature to enact a homemade food
8 act specifically designed to help address these challenges and
9 opportunities.

10 SEC. 2. Chapter 6.1 (commencing with Section 51035) is added
11 to Part 1 of Division 1 of Title 5 of the Government Code, to read:

12
13 CHAPTER 6.1. COTTAGE FOOD OPERATIONS

14
15 51035. (a) A city, county, or city and county shall not prohibit
16 a cottage food operation, as defined in Section 113758 of the
17 Health and Safety Code, in any residential dwellings, but shall do
18 one of the following:

19 (1) Classify a cottage food operation as a permitted use of
20 residential property for zoning purposes.

21 (2) Grant a nondiscretionary permit to use a residence as any
22 cottage food operation that complies with local ordinances
23 prescribing reasonable standards, restrictions, and requirements
24 concerning spacing and concentration, traffic control, parking,
25 and noise control relating to those homes. Any noise standards
26 shall be consistent with local noise ordinances implementing the
27 noise element of the general plan. The permit issued pursuant to
28 this paragraph shall be granted by the zoning administrator, or if
29 there is no zoning administrator, by the person or persons
30 designated by the planning agency to grant these permits, upon
31 the certification without a hearing.

32 (3) Require any cottage food operation to apply for a permit to
33 use a residence for its operation. The zoning administrator, or if
34 there is no zoning administrator, the person or persons designated
35 by the planning agency to handle the use permits, shall review and
36 decide the applications. The use permit shall be granted if the
37 cottage food operation complies with local ordinances, if any,
38 prescribing reasonable standards, restrictions, and requirements
39 concerning the following factors: spacing and concentration, traffic
40 control, parking, and noise control relating to those homes. Any

1 noise standards shall be consistent with local noise ordinances
2 implementing the noise element of the general plan. The local
3 government shall process any required permit as economically as
4 possible. Fees charged for review shall not exceed the costs of the
5 review and permit process. An applicant may request a verification
6 of fees, and the city, county, or city and county shall provide the
7 applicant with a written breakdown within 45 days of the request.
8 The application form for cottage food operation permits shall
9 include a statement of the applicant's right to request the written
10 fee verification.

11 (b) In connection with any action taken pursuant to paragraph
12 (2) or (3) of subdivision (a), a city, county, or city and county shall
13 do all of the following:

14 (1) Upon the request of an applicant, provide a list of the permits
15 and fees that are required by the city, county, or city and county,
16 including information about other permits that may be required
17 by other departments in the city, county, or city and county, or by
18 other public agencies. The city, county, or city and county shall,
19 upon request of any applicant, also provide information about the
20 anticipated length of time for reviewing and processing the permit
21 application.

22 (2) Upon the request of an applicant, provide information on
23 the breakdown of any individual fees charged in connection with
24 the issuance of the permit.

25 (3) If a deposit is required to cover the cost of the permit,
26 provide information to the applicant about the estimated final cost
27 to the applicant of the permit, and procedures for receiving a
28 refund from the portion of the deposit not used.

29 (c) Use of a residence for the purposes of a cottage food
30 operation shall not constitute a change of occupancy for purposes
31 of the State Housing Law (Part 1.5 (commencing with Section
32 17910) of Division 13 of the Health and Safety Code), or for
33 purposes of local building and fire codes.

34 (d) Cottage food operations shall be considered residences for
35 the purposes of the State Uniform Building Standards Code and
36 local building and fire codes.

37 ~~SEC. 2.~~

38 SEC. 3. Section 109947 of the Health and Safety Code is
39 amended to read:

1 109947. “Food processing facility” means any facility operated
2 for the purposes of manufacturing, packing, or holding processed
3 food. Food processing facility does not include a food facility as
4 defined in Section 113785, a cottage food operation that is
5 registered or has a permit pursuant to Section 114365, or any
6 facility exclusively storing, handling, or processing dried beans.

7 *SEC. 4. Section 110050 of the Health and Safety Code is*
8 *amended to read:*

9 110050. The Food Safety Fund is hereby created as a special
10 fund in the State Treasury. All moneys collected by the department
11 under subdivision (c) of Section 110466 and Sections 110470,
12 110471, 110485, 114365, 114365.6, 111130, and 113717, and
13 under Article 7 (commencing with Section 110810) of Chapter 5
14 shall be deposited in the fund, for use by the department, upon
15 appropriation by the Legislature, for the purposes of providing
16 funds necessary to carry out and implement the inspection
17 provisions of this part relating to food, licensing, inspection,
18 enforcement, and other provisions of Article 12 (commencing with
19 Section 111070) relating to water, the provisions relating to
20 education and training in the prevention of microbial contamination
21 pursuant to Section 110485, and the registration provisions of
22 Article 7 (commencing with Section 110810) of Chapter 5, and to
23 carry out and implement the provisions of the California Retail
24 Food Code (Part 7 (commencing with Section 113700) of Division
25 104).

26 ~~SEC. 3:~~

27 *SEC. 5. Section 110460 of the Health and Safety Code is*
28 *amended to read:*

29 110460. No person shall engage in the manufacture, packing,
30 or holding of any processed food in this state unless the person
31 has a valid registration from the department, except those engaged
32 exclusively in the storing, handling, or processing of dried beans.
33 The registration shall be valid for one calendar year from the date
34 of issue, unless it is revoked. The registration shall not be
35 transferable. This section shall not apply to a cottage food operation
36 that is registered or has a permit pursuant to Section 114365.

37 ~~SEC. 4:~~

38 *SEC. 6. Section 111955 of the Health and Safety Code is*
39 *amended to read:*

111955. “Food processing establishment,” as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. “Food processing establishment” shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

~~SEC. 5.~~

SEC. 7. Section 113758 is added to the Health and Safety Code, to read:

113758. (a) “Cottage food operation” means an enterprise that has not more than ~~fifty thousand dollars (\$50,000)~~ *the amount in gross annual sales and that is specified in this subdivision*, is operated by a cottage food operator, and *has* not more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where *the cottage food operator resides and where* cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to this part. *In 2013, the enterprise shall not have more than thirty-five thousand dollar (\$35,000) in gross annual sales in the calendar year. In 2014, the enterprise shall not have more than forty thousand dollars (\$40,000) in gross annual sales in the calendar year. Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year.* A cottage food operation includes both of the following:

(1) A “Class A” cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products *from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).*

(2) A “Class B” cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products *from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).*

(b) For purposes of this section, the following definitions shall apply:

(1) “Cottage food employee” means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An employee does not include an immediate family member or household member of the cottage food operator.

(2) “Cottage food operator” means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

(3) “Cottage food products” means ~~not potentially~~ *nonpotentially* hazardous foods, including foods ~~listed that are described in Section 114365.5, that do not meet the definition of a potentially hazardous food, as defined in Section 113871,~~ and that are prepared for sale in the kitchen of a cottage food operation.

(4) “Direct sale” means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers’ markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

(5) “Indirect sale” means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer *that holds a valid permit issued pursuant to Section 114381*. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises.

(6) “Private home” means a dwelling, including an apartment or other leased space, where individuals reside.

(7) “Registered or permitted area” means the portion of a private home *that contains the private home’s kitchen* used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, *and attached rooms within the home that are used exclusively for storage.*

~~SEC. 6.~~

SEC. 8. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) “Food facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) “Food facility” includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers’ markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) “Food facility” does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

~~SEC. 6.5.~~

SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

1 (b) “Food facility” includes permanent and nonpermanent food
2 facilities, including, but not limited to, the following:

3 (1) Public and private school cafeterias.

4 (2) Restricted food service facilities, *except as provided in*
5 *paragraph (13) of subdivision (c).*

6 (3) Licensed health care facilities.

7 (4) Commissaries.

8 (5) Mobile food facilities.

9 (6) Mobile support units.

10 (7) Temporary food facilities.

11 (8) Vending machines.

12 (9) Certified farmers’ markets, for purposes of permitting and
13 enforcement pursuant to Section 114370.

14 (10) Farm stands, for purposes of permitting and enforcement
15 pursuant to Section 114375.

16 (c) “Food facility” does not include any of the following:

17 (1) A cooperative arrangement wherein no permanent facilities
18 are used for storing or handling food.

19 (2) A private home, including a cottage food operation that is
20 registered or has a permit pursuant to Section 114365.

21 (3) A church, private club, or other nonprofit association that
22 gives or sells food to its members and guests, and not to the general
23 public, at an event that occurs not more than three days in any
24 90-day period.

25 (4) A for-profit entity that gives or sells food at an event that
26 occurs not more than three days in a 90-day period for the benefit
27 of a nonprofit association, if the for-profit entity receives no
28 monetary benefit, other than that resulting from recognition from
29 participating in an event.

30 (5) Premises set aside for wine tasting, as that term is used in
31 Section 23356.1 of the Business and Professions Code and in the
32 regulations adopted pursuant to that section, that comply with
33 Section 118375, regardless of whether there is a charge for the
34 wine tasting, if no other beverage, except for bottles of wine and
35 prepackaged nonpotentially hazardous beverages, is offered for
36 sale for onsite consumption and no food, except for crackers, is
37 served.

38 (6) Premises operated by a producer, selling or offering for sale
39 only whole produce grown by the producer, or shell eggs, or both,

1 provided the sales are conducted on premises controlled by the
2 producer.

3 (7) A commercial food processing plant as defined in Section
4 111955.

5 (8) A child day care facility, as defined in Section 1596.750.

6 (9) A community care facility, as defined in Section 1502.

7 (10) A residential care facility for the elderly, as defined in
8 Section 1569.2.

9 (11) A residential care facility for the chronically ill, which has
10 the same meaning as a residential care facility, as defined in Section
11 1568.01.

12 (12) Premises set aside by a beer manufacturer, as defined in
13 Section 25000.2 of the Business and Professions Code, that comply
14 with Section 118375, for the purposes of beer tasting, regardless
15 of whether there is a charge for the beer tasting, if no other
16 beverage, except for beer and prepackaged nonpotentially
17 hazardous beverages, is offered for sale for onsite consumption,
18 and no food, except for crackers or pretzels, is served.

19 (13) (A) An intermediate care facility for the developmentally
20 disabled, as defined in subdivisions (e), (h), and (m) of Section
21 1250, with a capacity of six beds or fewer.

22 (B) A facility described in subparagraph (A) shall report any
23 foodborne illness or outbreak to the local health department and
24 to the State Department of Public Health within 24 hours of the
25 illness or outbreak.

26 *SEC. 9. Section 113851 of the Health and Safety Code is*
27 *amended to read:*

28 113851. (a) "Permit" means the document issued by the
29 enforcement agency that authorizes a person to operate a food
30 facility *or cottage food operation*.

31 (b) "Registration" shall have the same meaning as permit for
32 purposes of implementation and enforcement of this part.

33 ~~SEC. 7.~~

34 *SEC. 10.* Section 114021 of the Health and Safety Code is
35 amended to read:

36 114021. (a) Food shall be obtained from sources that comply
37 with all applicable laws.

38 (b) Food stored or prepared in a private home shall not be used
39 or offered for sale in a food facility, unless that food is prepared

1 by a cottage food operation that is registered or has a permit
2 pursuant to Section 114365.

3 ~~SEC. 8.~~

4 *SEC. 11.* Section 114023 of the Health and Safety Code is
5 amended to read:

6 114023. Food in a hermetically sealed container shall be
7 obtained from a food processing plant that is regulated by the food
8 regulatory agency that has jurisdiction over the plant, or from a
9 cottage food operation *that produces jams, jellies, and preserves*
10 *and* that is registered or has a permit pursuant to Section 114365.

11 ~~SEC. 9.~~

12 *SEC. 12.* Section 114088 is added to the Health and Safety
13 Code, to read:

14 114088. A cottage food product, as defined in Section 113758,
15 that is served by a food facility without packaging or labeling, as
16 described in Section 114365, shall be identified to the consumer
17 as homemade on the menu, menu board, or other location that
18 would reasonably inform a consumer of its homemade status.

19 ~~SEC. 10.~~

20 *SEC. 13.* Chapter 11.5 (commencing with Section 114365) is
21 added to Part 7 of Division 104 of the Health and Safety Code, to
22 read:

23
24 CHAPTER 11.5. COTTAGE FOOD OPERATIONS
25

26 114365. (a) (1) (A) A “Class A” cottage food operation shall
27 not be open for business unless it is registered with the local
28 enforcement agency ~~in a manner that includes a~~ *and has submitted*
29 *a completed*, self-certification checklist approved by the local
30 enforcement ~~agency that verifies~~ *agency. The self-certification*
31 *checklist shall verify* that the cottage food operation conforms to
32 this chapter, including the following requirements:

33 (i) No cottage food preparation, packaging, or handling may
34 occur in the home kitchen concurrent with any other domestic
35 activities, such as family meal preparation, dishwashing, clothes
36 washing or ironing, kitchen cleaning, or guest entertainment.

37 (ii) No infants, small children, or pets may be in the home
38 kitchen during the preparation, packaging, or handling of any
39 cottage food products.

1 ~~(iii) Only normal types of kitchen~~ *Kitchen* equipment and
2 ~~utensils may be used to produce cottage food products shall be~~
3 ~~clean and maintained in a good state of repair.~~

4 (iv) All food contact surfaces, equipment, and utensils used for
5 the preparation, packaging, or handling of any cottage food
6 products shall be washed, rinsed, and sanitized before each use.

7 (v) All food preparation and food and equipment storage areas
8 shall be maintained free of rodents and insects.

9 (vi) Smoking shall be prohibited in the portion of a private home
10 used for the preparation, packaging, storage, or handling of cottage
11 food products and related ingredients or equipment, or both, while
12 cottage food products are being prepared, packaged, stored, or
13 handled.

14 (B) (i) The department shall post the requirements described
15 in subparagraph (A) on its Internet Web site.

16 (ii) The local enforcement agency shall issue a registration
17 number to a “Class A” cottage food operation that meets the
18 requirements of subparagraph (A).

19 (C) (i) Except as provided in (ii), a “Class A” cottage food
20 operation shall not be subject to initial or routine inspections.

21 (ii) For purposes of determining compliance with this chapter,
22 a representative of a local enforcement agency may access, for
23 inspection purposes, the registered area of a private home where
24 a cottage food operation is located only if the representative has,
25 on the basis of a consumer complaint, reason to suspect that
26 adulterated or otherwise unsafe food has been produced by the
27 cottage food operation or that the cottage food operation has
28 violated this chapter.

29 ~~(iii) An inspection made pursuant to this subparagraph shall be~~
30 ~~made at a reasonable time during regular business hours.~~

31 ~~(iv) If the representative from the local enforcement agency is~~
32 ~~denied access to the registered area where access was sought for~~
33 ~~the purpose of enforcing this chapter, the representative may apply~~
34 ~~to a court of competent jurisdiction for, and the court may issue,~~
35 ~~a search warrant authorizing access to the registered area.~~

36 ~~(v)~~

37 ~~(iii)~~ Access under this subparagraph is limited to the registered
38 area and solely for the purpose of enforcing or administering this
39 chapter.

40 ~~(vi)~~

1 (iv) A local enforcement agency may seek recovery from a
2 “Class A” cottage food operation of an amount that does not exceed
3 the local enforcement agency’s reasonable costs of inspecting the
4 “Class A” cottage food operation for compliance ~~of~~ *with* this
5 chapter, if the “Class A” cottage food operation is found to be in
6 violation of this chapter.

7 (2) (A) A “Class B” cottage food operation shall not be open
8 for business unless it obtains a permit from the local enforcement
9 agency in a manner approved by the local enforcement agency to
10 engage in the direct and indirect sale of cottage food products.

11 (B) (i) A “Class B” cottage food operation shall comply with
12 the requirements described in clauses (i) to (vi), inclusive, of
13 subparagraph (A) of paragraph (1) *in addition to the other*
14 *requirements of this chapter.*

15 (ii) The local enforcement agency shall issue a permit number
16 after an initial inspection has determined that the proposed “Class
17 B” cottage food operation and its method of operation conform to
18 this chapter.

19 (C) Except as provided in this subparagraph, a “Class B” cottage
20 food operation shall not be subject to more than one inspection
21 per year by the local enforcement agency.

22 (i) For purposes of determining compliance with this chapter,
23 a representative of a local enforcement agency, for inspection
24 purposes, may access the permitted area of a private home where
25 a cottage food operation is located only if the representative has,
26 on the basis of a consumer complaint, reason to suspect that
27 adulterated or otherwise unsafe food has been produced by the
28 cottage food operation, or that the cottage food operation has
29 violated this chapter.

30 ~~(ii) An inspection made pursuant to this subparagraph shall be~~
31 ~~made at a reasonable time and during regular business hours.~~

32 ~~(iii) If the representative from the local enforcement agency is~~
33 ~~denied access to the permitted area where access was sought for~~
34 ~~the purpose of enforcing this chapter, the representative may apply~~
35 ~~to a court of competent jurisdiction for, and the court may issue,~~
36 ~~a search warrant authorizing access to the permitted area.~~

37 ~~(iv)~~

38 (ii) Access under this subparagraph is limited to the permitted
39 area and solely for the purpose of enforcing or administering this
40 chapter.

(D) (i) A “Class B” cottage food operation shall be authorized to engage in the indirect sales of cottage food products within the county in which the “Class B” cottage food operation is permitted.

(ii) A county may agree to allow a “Class B” cottage food operation permitted in another county to engage in the indirect sales of cottage food products in the county.

(b) A registration or permit, once issued, is nontransferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

114365.2. A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections ~~113953.5, 114101, 114130, 114149.1, 114256.1, 113953.3, 114259.5, 114268, 114279, 114285, and 114286.~~ A cottage food operation that is registered or has a permit also shall be subject to Sections ~~113715 and 113967,~~ 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the registered or permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, except that a cottage food operation shall not be required to have an indirect sewer connection. Water used during the preparation of cottage food products includes ~~both~~ all of the following:

(1) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.

(2) The washing, sanitizing, and drying of hands and arms.

(3) *Water used as an ingredient.*

(d) A person who prepares or packages cottage food products shall complete a food handler course described in Section 113948, *instructed by the department within three months of becoming registered. The course shall not exceed four hours in length. The*

1 *department shall work with the local enforcement agency to ensure*
2 *that cottage food operators are properly notified of the location,*
3 *date, and time of the classes offered.*

4 (e) A cottage food operation shall properly label all cottage food
5 products in compliance with the Federal Food, Drug, and Cosmetic
6 Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent
7 permitted by federal law, the label shall include, but is not limited
8 to, all of the following:

9 (1) The words “Made in a Home Kitchen” in 12-point type on
10 the cottage food product’s primary display panel.

11 (2) The name commonly used for the food product or an
12 adequately descriptive name.

13 (3) The name of the cottage food operation which produced the
14 cottage food product.

15 (4) The registration or permit number of the “Class A” or “Class
16 B” cottage food operation, respectively, which produced the cottage
17 food product and, in the case of a “Class B” cottage food operation,
18 the name of the county of the local enforcement agency that issued
19 the permit number.

20 (5) The ingredients of the cottage food product, in descending
21 order of predominance by weight, if the product contains two or
22 more ingredients.

23 114365.5. (a) The department shall adopt and post on its
24 Internet Web site a list of not potentially hazardous foods and their
25 ethnic variations that are approved for sale by a cottage food
26 operation. *A cottage food product shall not be potentially*
27 *hazardous food, as defined in Section 113871.*

28 (b) This list of ~~not potentially~~ *nonpotentially* hazardous foods
29 shall include, but not be limited to, all of the following:

30 (1) Baked goods without cream, custard, or meat fillings, such
31 as breads, *biscuits*, churros, cookies, pastries, and tortillas.

32 (2) Candy, such as brittle and toffee.

33 (3) Chocolate-covered nonperishable foods, such as nuts and
34 dried fruit.

35 (4) Dried fruit.

36 (5) Dried pasta.

37 (6) Dry baking mixes.

38 (7) Fruit pies, fruit empanadas, and fruit tamales.

39 (8) Granola and other dried cereal, *cereals, and trail mixes.*

40 (9) Herb blends and dried mole paste.

1 (10) Honey and sweet sorghum syrup.

2 (11) Jams, jellies, preserves, and fruit butter *that comply with*
3 *the standard described in Part 150 of Title 21 of the Code of*
4 *Federal Regulations.*

5 (12) Nut mixes and nut butters.

6 (13) Popcorn.

7 ~~(14) Rice cakes and rice noodles that comply with the handling~~
8 ~~and labeling requirements of Sections 111222 and 111223.~~

9 ~~(15)~~

10 (14) Vinegar and mustard.

11 ~~(16)~~

12 (15) Roasted coffee and dried tea.

13 ~~(17)~~

14 (16) Waffle cones and pizelles.

15 ~~(e) Additions to the list of foods specified in subdivision (b) are~~
16 ~~subject to approval by the department.~~

17 (c) (1) *The State Public Health Officer may add or delete food*
18 *products to or from the list described in subdivision (b), which*
19 *shall be known as the approved food products list. Notice of any*
20 *change to the approved food products list shall be posted on the*
21 *department's cottage food program Internet Web site, to also be*
22 *known as the program Internet Web site for purposes of this*
23 *chapter. Any change to the approved food products list shall*
24 *become effective 30 days after the notice is posted. The notice shall*
25 *state the reason for the change, the authority for the change, and*
26 *the nature of the change. The notice will provide an opportunity*
27 *for written comment by indicating the address to which to submit*
28 *the comment and the deadline by which the comment is required*
29 *to be received by the department. The address to which the*
30 *comment is to be submitted may be an electronic site. The notice*
31 *shall allow at least 20 calendar days for comments to be submitted.*
32 *The department shall consider all comments submitted before the*
33 *due date. The department may withdraw the proposed change at*
34 *any time by notification on the program Internet Web site or*
35 *through notification by other electronic means. The approved food*
36 *products list described in subdivision (b), and any updates to the*
37 *list, shall not be subject to the administrative rulemaking*
38 *requirements of Chapter 3.5 (commencing with Section 11340) of*
39 *Part 1 of Division 3 of Title 2 of the Government Code.*

1 (2) *The State Public Health Officer shall not remove any items*
2 *from the approved food products list unless the State Public Health*
3 *Officer also posts information on the program Internet Web site*
4 *explaining the basis upon which the removed food item has been*
5 *determined to be potentially hazardous.*

6 114365.6. (a) *The State Public Health Officer shall provide*
7 *technical assistance, and develop, maintain, and deliver*
8 *commodity-specific training related to the safe processing and*
9 *packaging of cottage food products to local enforcement agencies.*

10 (b) *Local enforcement agencies may collect a surcharge fee in*
11 *addition to any permit fees collected for “Class B” cottage food*
12 *operations. The surcharge fee shall not exceed the reasonable*
13 *costs that the department incurs through the administration of the*
14 *training described in subdivision (a) to protect the public health.*
15 *The surcharge fees collected shall be transmitted to the department*
16 *in a manner established by the department to be deposited in the*
17 *Food Safety Fund. The department shall use the surcharge fees*
18 *only to develop and deliver the training described in subdivision*
19 *(a) to local enforcement agency personnel on an ongoing basis.*

20 ~~114365.7. All of the following shall apply to cottage food~~
21 ~~operations:~~

22 ~~(a) A city, county, or city and county shall not prohibit cottage~~
23 ~~food operations in any residential dwellings, but shall do one of~~
24 ~~the following:~~

25 ~~(1) Classify these operations as a permitted use of residential~~
26 ~~property for zoning purposes.~~

27 ~~(2) Grant a nondiscretionary permit to use a residence as any~~
28 ~~cottage food operation that complies with local ordinances~~
29 ~~prescribing reasonable standards, restrictions, and requirements~~
30 ~~concerning spacing and concentration, traffic control, parking, and~~
31 ~~noise control relating to those homes. Any noise standards shall~~
32 ~~be consistent with local noise ordinances implementing the noise~~
33 ~~element of the general plan. The permit issued pursuant to this~~
34 ~~paragraph shall be granted by the zoning administrator, or if there~~
35 ~~is no zoning administrator, by the person or persons designated~~
36 ~~by the planning agency to grant these permits, upon the certification~~
37 ~~without a hearing.~~

38 ~~(3) Require any cottage food operation to apply for a permit to~~
39 ~~use a residence for its operation. The zoning administrator, or if~~
40 ~~there is no zoning administrator, the person or persons designated~~

1 by the planning agency to handle the use permits, shall review and
2 decide the applications. The use permit shall be granted if the
3 cottage food operation complies with local ordinances, if any,
4 prescribing reasonable standards, restrictions, and requirements
5 concerning the following factors: spacing and concentration, traffic
6 control, parking, and noise control relating to those homes. Any
7 noise standards shall be consistent with local noise ordinances
8 implementing the noise element of the general plan. The local
9 government shall process any required permit as economically as
10 possible. Fees charged for review shall not exceed the costs of the
11 review and permit process. An applicant may request a verification
12 of fees, and the city, county, or city and county shall provide the
13 applicant with a written breakdown within 45 days of the request.
14 The application form for cottage food operation permits shall
15 include a statement of the applicant's right to request the written
16 fee verification.

17 (b) In connection with any action taken pursuant to paragraph
18 (2) or (3) of subdivision (a), a city, county, or city and county shall
19 do all of the following:

20 (1) Upon the request of an applicant, provide a list of the permits
21 and fees that are required by the city, county, or city and county,
22 including information about other permits that may be required
23 by other departments in the city, county, or city and county, or by
24 other public agencies. The city, county, or city and county shall,
25 upon request of any applicant, also provide information about the
26 anticipated length of time for reviewing and processing the permit
27 application.

28 (2) Upon the request of an applicant, provide information on
29 the breakdown of any individual fees charged in connection with
30 the issuance of the permit.

31 (3) If a deposit is required to cover the cost of the permit,
32 provide information to the applicant about the estimated final cost
33 to the applicant of the permit, and procedures for receiving a refund
34 from the portion of the deposit not used.

35 (e) Use of a residence for the purposes of a cottage food
36 operation shall not constitute a change of occupancy for purposes
37 of the State Housing Law (Part 1.5 (commencing with Section
38 17910) of Division 13), or for purposes of local building and fire
39 codes.

1 ~~(d) Cottage food operations shall be considered residences for~~
2 ~~the purposes of the State Uniform Building Standards Code and~~
3 ~~local building and fire codes.~~

4 *SEC. 14. Section 114390 of the Health and Safety Code is*
5 *amended to read:*

6 114390. (a) Enforcement officers shall enforce this part and
7 all regulations adopted pursuant to this part.

8 (b) (1) For purposes of enforcement, any authorized
9 enforcement officer may, during the facility's hours of operation
10 and other reasonable times, enter, inspect, issue citations to, and
11 secure any sample, photographs, or other evidence from a food
12 facility, *cottage food operation*, or any facility suspected of being
13 a food facility *or cottage food operation*, or a vehicle transporting
14 food to or from a retail food facility, when the vehicle is stationary
15 at an agricultural inspection station, a border crossing, or at any
16 food facility under the jurisdiction of the enforcement agency, or
17 upon the request of an incident commander.

18 (2) If a food facility is operating under an HACCP plan, the
19 enforcement officer may, for the purpose of determining
20 compliance with the plan, secure as evidence any documents, or
21 copies of documents, relating to the facility's adherence to the
22 HACCP plan. Inspection may, for the purpose of determining
23 compliance with this part, include any record, file, paper, process,
24 HACCP plan, invoice, or receipt bearing on whether food,
25 equipment, or utensils are in violation of this part.

26 (c) Notwithstanding subdivision (a), an employee may refuse
27 entry to an enforcement officer who is unable to present official
28 identification showing the enforcement officer's picture and
29 enforcement agency name. In the absence of the identification
30 card, a business card showing the enforcement agency's name plus
31 a picture identification card such as a driver's license shall meet
32 this requirement.

33 (d) It is a violation of this part for any person to refuse to permit
34 entry or inspection, the taking of samples or other evidence, access
35 to copy any record as authorized by this part, to conceal any
36 samples or evidence, withhold evidence concerning them, or
37 interfere with the performance of the duties of an enforcement
38 officer, including making verbal or physical threats or sexual or
39 discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 15. Section 114405 of the Health and Safety Code is amended to read:

114405. (a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility *or cottage food operation* for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility *or cottage food operation* for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility *or cottage food operation* is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permitholder. If the permitholder fails to comply, the local enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or revoked. A written request for a hearing shall be made by the permitholder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permitholder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16. Section 114409 of the Health and Safety Code is amended to read:

114409. (a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility *or cottage food operation* immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which

1 the permitholder is charged, specifying the pertinent code section,
2 and informing the permitholder of the right to a hearing.

3 (c) At any time within 15 calendar days after service of a notice
4 pursuant to subdivision (b), the permitholder may request in writing
5 a hearing before a hearing officer to show cause why the permit
6 suspension is not warranted. The hearing shall be held within 15
7 calendar days of the receipt of a request for a hearing. A failure to
8 request a hearing within 15 calendar days shall be deemed a waiver
9 of the right to a hearing.

10 ~~SEC. 11.~~

11 *SEC. 17.* Section ~~6.5~~ 8.5 of this bill incorporates amendments
12 to Section 113789 of the Health and Safety Code proposed by both
13 this bill and Assembly Bill 2297. It shall only become operative
14 if (1) both bills are enacted and become effective on or before
15 January 1, 2013, (2) each bill amends Section 113789 of the Health
16 and Safety Code, and (3) this bill is enacted after Assembly Bill
17 2297, in which case Section ~~6~~ 8 of this bill shall not become
18 operative.

19 ~~SEC. 12.~~

20 *SEC. 18.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution for certain
22 costs that may be incurred by a local agency or school district
23 because, in that regard, this act creates a new crime or infraction,
24 eliminates a crime or infraction, or changes the penalty for a crime
25 or infraction, within the meaning of Section 17556 of the
26 Government Code, or changes the definition of a crime within the
27 meaning of Section 6 of Article XIII B of the California
28 Constitution.

29 However, if the Commission on State Mandates determines that
30 this act contains other costs mandated by the state, reimbursement
31 to local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.